ROBERT PATRICK STICHT (SBN 138586)
ROBERT D. POPPER (*Pro Hac Vice*)
T. RUSSELL NOBILE*
JUDICIAL WATCH, INC.
425 Third Street SW, Suite 800
Washington, D.C. 20024
Telephone: (202) 646-5172
Facsimile: (202) 646-5199
Email: rsticht@judicialwatch.org
Email: rnobile@judicialwathc.org
Email: rpopper@judicialwatch.org

H. CHRISTOPHER COATES*
Law Office of H. Christopher Coates
934 Compass Point
Charleston, South Carolina 29412
Telephone: (843) 609-7080
Email: curriecoates@gmail.com

**Application for admission pro hac vice pending/forthcoming*

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

JERRY GRIFFIN, MICHELLE BOLOTIN, MICHAEL SIENKIEWICZ, AND JAMES B. OERDING,

Plaintiffs,

v.

ALEX PADILLA, in his official capacity as Secretary of State of California,

Defendant.

Case No. 2:19-cv-01477-MCE-DB

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

BACKGROUND FACTS 1

LEGAL STANDARD 2

ARGUMENT 3

I. Plaintiffs Are Likely to Succeed on the Merits. 3

A. SB 27 Violates the Presidential Qualifications Clause. 3

B. SB 27 Threatens Plaintiffs' First Amendment Speech and Associational Rights 6

C. SB 27 Threatens Plaintiffs' Fourteenth Amendment Rights to the Equal Protection of the Laws. 11

II. The Remaining Preliminary Injunction Factors Favor the Plaintiffs. 12

CONCLUSION 13

TABLE OF AUTHORITIES

CASES

Alliance For The Wild Rockies v. Cottrell, 632 F.3d 1127 (9th Cir. 2011) 2
Anderson v. Celebrezze, 460 U.S. 780 (1983) 6, 8, 11
Burdick v. Takushi, 504 U.S. 428 (1992) 6
Cook v. Gralike, 531 U.S. 510 (2001) 4
De La Fuente v. Merrill, 214 F. Supp. 3d 1241 (M.D. Ala. 2016) 11
Elrod v. Burns, 427 U.S. 347 (1976) 12
Green Party v. N.Y. State Bd. of Elections, 389 F.3d 411 (2d Cir. 2004) 12
Ill. State Bd. of El. v. Socialist Workers Party, 440 U.S. 173 (1979) 6, 7, 11
Klein v. City of San Clemente, 584 F.3d 1196 (9th Cir. 2009) 12
Lubin v. Panish, 415 U.S. 709 (1974) 6, 7, 11
Matsumoto v. Pua, 775 F.2d 1393 (9th Cir. 1985) 7
New York Times Co. v. United States, 403 U.S. 713 (1971) 12
Norman v. Reed, 502 U.S. 279 (1992) 7, 8, 10
Powell v. McCormack, 395 U.S. 486 (1969) 6
Rodriguez v. Robbins, 715 F.3d 1127 (9th Cir. 2013) 12
Schaefer v. Townsend, 215 F.3d 1031 (9th Cir. 2000) 4, 5, 11
Soltysik v. Padilla, 910 F.3d 438 (9th Cir. 2018) 6
Thalheimer v. City of San Diego, 645 F.3d 1109 (9th Cir. 2011) 2
U.S. Term Limits v. Thornton, 514 U.S. 779 (1995) 3, 4, 5, 6
Valle del Sol, Inc. v. Whiting, 732 F.3d 1006 (9th Cir. 2013) 12
Williams v. Rhodes, 393 U.S. 23 (1968) 7, 11
Winter v. NRDC, Inc., 555 U.S. 7 (2008) 2

CONSTITUTIONAL PROVISIONS

U.S. CONST. art. II, § 1, cl. 5 3

STATUTES

Cal. Elec. Code § 6881 ..... 5, 8

Cal. Elec. Code § 6883 1

5 U.S.C. App. 4 § 102 9

REGULATIONS

5 C.F.R. § 2634.101 9

OTHER

California Committee on the Judiciary Report (Senate), March 11, 2019, available at http://bit.ly/2KvpBPX 1

SB 149 Presidential Primary Elections: Ballot Access (2017-2018), available at http://bit.ly/2OQNO7n 1

MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

BACKGROUND FACTS

Since the United States ratified the Sixteenth Amendment authorizing the federal income tax in 1913, voters have cast their ballots in 26 presidential elections. During that time no state or federal law has ever mandated that presidential candidates disclose their tax returns to qualify to appear on a primary or general ballot. Indeed, it is probable that no state ever thought that it could, given the clear instructions on presidential qualifications set forth in the Constitution.

Yet California now proposes to enforce such a mandate. On July 30, 2019, California Governor Newsom signed into law the Presidential Tax Transparency and Accountability Act, S. Bill 27, 2019-2020 Reg. Sess. (Cal. 2019) (hereafter "SB 27"). SB 27 requires partisan presidential candidates seeking to participate in California's primary to disclose "every income tax return the candidate filed with the Internal Revenue Service in the five most recent taxable years." *Id*. at § 6883(a). Tax returns must be produced 98 days before the presidential primary. *Id.* For the 2020 presidential primary, this deadline is Tuesday, November 26, 2019. SB 27 does not apply to independent presidential candidates who do not run in primaries. As Secretary of State, Defendant Alex Padilla is tasked with overseeing and enforcing this requirement. *Id*.

The California Legislature previously adopted similar legislation in 2017. *See* SB 149, Presidential Primary Elections: Ballot Access (2017-2018), available at http://bit.ly/2OQNO7n. In so doing it ignored the advice of its own nonpartisan Office of Legislative Counsel, which had issued a written opinion determining that SB 149 "would violate the qualifications clause of the United States Constitution." *See* California Committee on the Judiciary Report (Senate), March 11, 2019, at 5 available at http://bit.ly/2KvpBPX ("Judiciary Report"). SB 149 failed at the final hurdle, however, after Governor Jerry Brown vetoed it. In his veto message, Governor Brown listed a number of objections, observing that the bill "may not be constitutional," and that a "qualified candidate's ability to appear on the ballot is fundamental to our democratic system." *See* SB 149 Status, available at http://bit.ly/2yWDZu0.

Plaintiffs are four registered California voters. As set forth in their attached declarations, two are registered Republicans, one is a registered Democrat, and one is registered as an Independent. They have sued to enjoin the enforcement of SB 27 on the grounds that it plainly violates the Constitution's provisions regarding candidate qualifications, and that, by harming particular candidates they prefer and generally limiting their choice of primary candidates, the law will violate their First Amendment speech and associational rights and their Fourteenth Amendment rights to the equal protection of the laws. Plaintiffs now move for preliminary relief enjoining the operation of SB 27.

For the reasons set forth below, Plaintiffs respectfully request that the Court issue an order enjoining the enforcement of SB 27 during the pendency of this action, and in particular during California's upcoming partisan primaries on March 3, 2020.

LEGAL STANDARD

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted). In evaluating these criteria, the Ninth Circuit employs a "sliding scale," under which a "preliminary injunction is appropriate" if a plaintiff shows that there are "serious questions going to the merits" and that "the balance of hardships tips sharply in the plaintiff's favor." *Alliance For The Wild Rockies v. Cottrell,* 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal quotations and citation omitted). In the particular context of a claim involving the First Amendment, "the moving party bears the initial burden of making a colorable claim that its First Amendment rights have been infringed, or are threatened with infringement, at which point the burden shifts to the government to justify the restriction." *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1116 (9th Cir. 2011) (citation omitted).

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits.

On September 7, 2017, the California Legislature's own Legislative Counsel produced a lengthy, reasoned assessment of SB 149, the predecessor to SB 27. *See* Declaration of Melissa Melendez, Ex. 1, *Melendez, et al., v. Newsom, et al*., 2:19-cv-1506-MCE-DB (E.D. Cal.), ECF No. 17-8 (Aug. 10, 2019). Like SB 27, SB 149 required a presidential candidate to release his or her five most recent tax returns in order to be placed on the primary ballot; directed that the Secretary of State post those returns on the internet; and provided the same justification later incorporated in SB 27. *Id.* at 1-2 (ECF No. 17-8 at 2-3).

After reviewing SB 149, the Legislative Counsel concluded unequivocally that "it is our opinion that Senate Bill No. 149 . . . if enacted, would violate the qualifications clause of the United States Constitution." *Id.* at 11 (ECF No. 17-8 at 12). The fact that the California Legislature's own lawyers advised against such a law on constitutional grounds is a strong indication that Plaintiffs are likely to prevail on the merits of their constitutional claims.

The opinion of the California Legislature's Legislative Counsel was correct. For the reasons set forth below, Plaintiffs are likely to establish that SB 27 violates their constitutional voting rights.

A. SB 27 Violates the Presidential Qualifications Clause.

The Constitution sets forth the following qualifications for being elected president:

> No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

U.S. CONST. art. II, § 1, cl. 5 ("Qualifications Clause").

States may not add to these requirements. In *U.S. Term Limits v. Thornton*, 514 U.S. 779, 805 (1995), the Supreme Court squarely rejected any notion that "States possess reserved power to add qualifications to those that are fixed in the Constitution." "[T]he text and structure of the Constitution, the relevant historical materials, and, most importantly, the 'basic principles

of our democratic system' all demonstrate that the Qualifications Clauses were intended to preclude the States from exercising any such power and to fix as exclusive the qualifications in the Constitution." *Id.* at 806[1]; *see id*. at 827 (confirming "the Framers' intent" that States "should [not] "possess the power to supplement the exclusive qualifications set forth in the text of the Constitution"). The Ninth Circuit has interpreted *U.S. Term Limits* as holding that a statute imposes "unconstitutional additional qualifications" if "they have the likely effect of handicapping an otherwise qualified class of candidates." *Schaefer v. Townsend*, 215 F.3d 1031, 1035 (9th Cir. 2000).

SB 27 fails this test. It imposes the extra-constitutional requirement that candidates for president running in party primaries must be willing to release their personal tax returns for the past five years to State authorities, who will then post those returns on the internet. The class of candidates who choose not to endure this extraordinary invasion of privacy are barred from appearing on their own party's ballot in the March 2020 California primaries. As of this writing, this class includes the incumbent President of the United States and three Democratic hopefuls (Tulsi Gabbard, Andrew Yang, and Julian Castro), each of whom otherwise appears qualified under the Qualifications Clause. This class of candidates is clearly disadvantaged in the party primaries by being kept off the ballots.[2] Moreover, because their exclusion from the primary ballot is public and, apparently, punitive, their electoral prospects in the general election will suffer. *See Cook v. Gralike*, 531 U.S. 510, 514-15 (2001) (striking down provision that would have required a statement on the ballot about candidates' failure to support term limits where

[1] While the statute at issue in *U.S. Term Limits* concerned congressional qualifications, the Court's use of the plural in the cited text, referring to "Qualifications *Clauses*," shows that its reasoning also applies to presidential qualifications. *See also id.* at 803 (citing approvingly Judge Story's view that States have the same right "and no more, to prescribe new qualifications for a representative, as they have for a president") (internal quotations and citation omitted); *id*. at 805 n.17 ("The [Qualifications] Clauses also reflect the idea that the Constitution treats both the President and Members of Congress as federal officers" over which the states only have delegated, not reserved powers).

[2] The possibility of a write-in candidacy does not mitigate this disadvantage. "[I]n over 1,300 Senate elections since the passage of the Seventeenth Amendment in 1913, only 1 has been won by a write-in candidate. In over 20,000 House elections since the turn of the [20th] century, only 5 have been won by write-in candidacies." *U.S. Term Limits*, 514 U.S. at 830 n.43.

such pejorative "ballot designations would handicap candidates"). The fact that candidates may avoid harm by "choosing" to release their tax returns does not save California's law. They are still faced with the ugly choice between allowing a significant invasion of their privacy or accepting an electoral handicap. This burden "may very well deter candidates from running." *Schaefer*, 215 F.3d at 1037 (striking down a California pre-election residency requirement). Accordingly, SB 27 violates the Qualifications Clause.

Nor is SB 27 a valid exercise of a power delegated by one of the Constitution's Elections Clauses to regulate the "manner" of elections. "[T]he Framers understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." *U.S. Term Limits*, 514 U.S. at 833-34. Permissible regulations include "generally applicable and evenhanded restrictions that protect the integrity and reliability of the electoral process itself" and support "States' interest in having orderly, fair, and honest elections 'rather than chaos,'" such as regulations "preventing interparty raiding," "avoiding voter confusion, ballot overcrowding, or . . . frivolous candidacies," or "guarding against . . . error in the tabulation of votes." *Id.* at 834 (internal quotations and citations omitted). These regulations concerned "election *procedures* and did not even arguably impose any substantive qualification rendering a class of potential candidates ineligible for ballot position." *Id.* at 835. "And they did not involve measures that exclude candidates from the ballot without reference to the candidates' support in the electoral process." *Id.*

Nothing about SB 27 is procedural. It purports to provide voters what it deems "essential information" about a candidate's "conflicts of interest, business dealings, financial status, and charitable donations," to allow voters to "better estimate the risks" that a candidate will commit a crime, and to enforce financial regulations. Cal. Elec. Code § 6881. These purposes embody substantive (and debatable) judgments about what voters, in the opinion of the California Legislature, should find illuminating or important about a candidate. But SB 27 does not concern electoral procedure as understood and described by the Supreme Court: it does

not "protect the integrity and reliability of the electoral process itself" or ensure "orderly, fair, and honest elections." *U.S. Term Limits*, 514 U.S. at 834. And it "exclude[s] candidates from the ballot without reference to" their electoral support. *Id.* Thus, SB 27 is not authorized under the Elections Clause.

B. SB 27 Threatens Plaintiffs' First Amendment Speech and Associational Rights.

"A fundamental principle of our representative democracy is . . . 'that the people should choose whom they please to govern them.'" *Powell v. McCormack*, 395 U.S. 486, 547 (1969) (citation omitted). "[T]his principle is undermined as much by limiting whom the people can select as by limiting the franchise itself." *Id.* As a result, where ballot restrictions burden "an individual candidate's . . . political opportunity,"

> [t]he interests involved are not merely those of parties or individual candidates; the voters can assert their preferences only through candidates or parties or both, and it is this broad interest that must be weighed in the balance. The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters.

Lubin v. Panish, 415 U.S. 709, 716 (1974).

The Supreme Court has recognized that laws restricting candidates' access to the ballot "burden two distinct and fundamental" First Amendment rights held by voters. *Ill. State Bd. of El. v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). First, the "freedom to associate as a political party" has "diminished practical value if the party can be kept off the ballot." *Id.* Second, "[a]ccess restrictions also implicate the right to vote" because "limiting the choices available to voters . . . impairs the voters' ability to express their political preferences." *Id.*; *see Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983) ("The impact of candidate eligibility requirements on voters implicates basic constitutional rights.") (citations omitted).

A "regulation imposing 'severe' restrictions" on voting rights protected by the First Amendment is "subject to strict scrutiny." *Soltysik v. Padilla*, 910 F.3d 438, 444 (9th Cir. 2018) (citation omitted). To satisfy this standard, "the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'" *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)

(citation omitted). Courts routinely treat restrictions on candidates' access to the ballot as severe burdens on the right to vote. *See, e.g., Matsumoto v. Pua*, 775 F.2d 1393, 1397 (9th Cir. 1985) (two-year disqualification provision on candidates who had been recalled "impose[d] a severe burden on the rights of recalled city officials and their supporters"); *Norman v. Reed*, 502 U.S. 279, 288 (1992) (law "limiting the access of new parties to the ballot" was a "severe restriction" that must "be narrowly drawn to advance a state interest of compelling importance"); *Lubin*, 415 U.S. at 716 ("the right to vote is 'heavily burdened' if that vote may be cast only for one of two candidates in a primary election at a time when other candidates are clamoring for a place on the ballot"), citing *Williams v. Rhodes*, 393 U.S. 23, 31 (1968) (requiring compelling justification for law restricting minor party access to ballot).

Plaintiffs' First Amendment associational and expressive rights will be severely burdened by SB 27. It will have the extraordinary effect of barring qualified candidates, including the incumbent President of the United States, from running on the ballot in their own party's primaries in the largest state in the country. Plaintiffs, along with millions of other voters, vote in those primaries. Plaintiffs Jerry Griffin and Michael Sienkiewicz are registered Republicans who intend to vote for a party candidate in the primary who has announced he will not release his tax returns. If the State of California can prevent their preferred candidate from appearing on the primary ballot, their First Amendment rights to express their views by voting for that candidate are infringed. Their freedom to associate with like-minded voters in the Republican Party for a common purpose, and their right to help establish their party's nomination rules, are also infringed. Plaintiff James B. Oerding is a registered Democrat who intends to vote in the Democratic primary. By "limiting the choices available" to Mr. Oerding by keeping candidates off the primary ballot, SB 27 "impairs [his] ability to express [his] political preferences." *Ill. State Bd. of El.*, 440 U.S. at 184. His freedom to associate with like-minded Democrats and help establish the party's nomination rules are also infringed. Plaintiff Michelle Bolotin is a registered Independent, whose ability to express political preferences in

the 2020 general election is impaired if her choice of candidates is limited by virtue of SB 27's effect in both the Republican and Democratic primaries.

Because the burdens it inflicts on voters are severe, SB 27 must be "narrowly drawn to advance a state interest of compelling importance." *Norman*, 502 U.S. at 289. SB 27 cannot satisfy this standard.

It is important to note at the outset that any proposed justification for SB 27 is made less compelling by virtue of the fact that a *state* is seeking to regulate a *national* electoral process. "[I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest," since "the President and the Vice President . . . are the only elected officials who represent all the voters in the Nation." *Anderson*, 460 U.S. at 794-95. Because "the impact of the votes cast in each State is affected by the votes cast . . . in other States," in "a Presidential election a State's enforcement of more stringent ballot access requirements . . . has an impact beyond its own borders." *Id*. at 795. "Similarly, *the State has a less important interest in regulating Presidential elections* than statewide or local elections, because the outcome . . . will be largely determined by voters beyond the State's boundaries." *Id*. (emphasis added).

The interests proposed in order to justify SB 27 are woefully inadequate. The statute declares that "the State of California has a strong interest in ensuring that its voters make informed, educated choices in the voting booth," and that "a Presidential candidate's income tax returns provide voters with essential information regarding the candidate's potential conflicts of interest, business dealings, financial status, and charitable donations," which will "help[] voters to make a more informed decision" and "better estimate the risks" that a candidate will "engag[e] in corruption." Cal. Elec. Code § 6881. The statute also claims that "the State of California has an interest in ensuring that any violations of the Foreign Emoluments Clause of the United States Constitution or statutory prohibitions on behavior such as insider trading are detected and punished." *Id.*

The statute's explanation of its purposes certainly contains high-sounding words that suggest important interests, like having voters make informed choices or preventing insider trading. But the statute itself has almost nothing to do with these interests. Presidential candidates already must comply with a battery of financial disclosures mandated by the federal Ethics in Government Act and related federal regulations. *See* 5 U.S.C. App. 4 § 102 (EIGA); 5 C.F.R. § 2634.101, *et seq*. One candidate alone filed about one hundred pages per year in detailed financial disclosures under these regulations. *See* Declaration of Thomas McCarthy, Exs. A & B, *Donald J. Trump for President, Inc., et al., v. Padilla, et al.*, 2:19-cv-1501-MCE-DB (E.D. Cal.), ECF Nos. 10-3 and 10-4 (Aug. 8, 2019). To the extent that Defendant would justify SB 27 under the standard of strict scrutiny, it must identify some compelling objective that SB 27 would accomplish *that EIGA does not*. The California Legislature has not attempted such a showing.

SB 27's implicit suggestion that the ability to review a candidate's tax returns will help voters predict whether that candidate will commit future crimes is preposterous. There is no evidence in the legislative history showing any particular correlation between the contents of a tax return and the likelihood the filer will commit crimes, nor is there any discussion of whether voters have ever identified or acted upon such information. Plaintiffs respectfully submit that common sense suggest that such evidence is not likely to exist. In the same vein, the notion that tax returns will help state authorities enforce the Foreign Emoluments Clause, or laws barring insider trading, or prohibitions like ("such as") insider trading, are unsupported by evidence and, Plaintiffs submit, inherently far-fetched. Tax returns are submitted to the Internal Revenue Service, whose agents are trained to identify criminal activity and have the power to demand audits. There is no reason to think the IRS will miss something voters will not, or that a candidate will be willing to file a tax return with the IRS revealing financial corruption as long as it is not publicly released. The means employed by SB 27, namely forcing party-affiliated candidates to release their tax returns, is not narrowly tailored to achieve its purported ends.

The emptiness of these proposed justifications is pointedly revealed by the fact that SB 27 claims that among the "essential" facts it will to provide voters is information about a candidate's "charitable donations." What future crimes will such information predict? (Is stinginess a crime?) This information seems more likely to embarrass a candidate than to reveal a proclivity for financial crimes. But a desire to embarrass candidates does not constitute a compelling justification for violating voters' First Amendment rights. It is also telling that the requirement that candidates release tax returns in order to appear on the ballot in a party primary does not apply to independent candidates who do not run in primaries. To the extent that the legislative purposes set forth in SB 27 are valid, they logically should apply to all candidates, party-affiliated as well as independent. There is no justification for any distinction in this regard. Nor is there any sound reason, given the State's alleged interests, that its requirements should not apply to candidates running for California's senatorial or its many congressional seats. The justifications offered in behalf of SB 27 are undermined by the fact that it only applies to those who run in party primaries, and then only to those who are running for President.

Finally, and notwithstanding any of the foregoing considerations, SB 27 clearly violates the Qualifications Clause for the reasons set forth in part I.A. That clause does not admit of any exceptions, nor does it suggest any kind of weighing or balancing with other constitutional interests. Plaintiffs respectfully submit that no state can argue that a statute is narrowly tailored to achieve a compelling justification if that statute involves an outright violation of a clear constitutional mandate. Because it conflicts with the Qualifications Clause, SB 27 cannot survive strict scrutiny review.[3]

For all of these reasons, SB 27 is not "narrowly drawn to advance a state interest of compelling importance." *Norman*, 502 U.S. at 288. Unless enjoined, SB 27 will violate Plaintiffs' First Amendment rights without a legally sufficient justification.

[3] Plaintiffs also note and join in the arguments made by other plaintiffs that SB 27 is preempted by the federal Ethics in Government Act. *See, e.g.,* Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Injunction, *Donald J. Trump for President, Inc., et al., v. Padilla, et al.*, 2:19-cv-1501-MCE-DB (E.D. Cal.), ECF No. 10-1 at 13 (Aug. 8, 2019). SB 27 cannot be narrowly tailored insofar as it is contrary to federal law.

C. SB 27 Threatens Plaintiffs' Fourteenth Amendment Rights to the Equal Protection of the Laws.

In considering the First Amendment claims at issue in *Anderson*, the Supreme Court acknowledged that "[w]e rely . . . on the analysis in a number of our prior election cases resting on the Equal Protection Clause of the Fourteenth Amendment." 460 U.S. at 786 n.7, citing, *inter alia*, *Williams*, *Lubin*, and *Ill. State Bd. of El.*, *supra*. In light of the fact that the Supreme Court in *Anderson* took "its analysis from prior equal-protection analyses of voting-rights issues," the "analysis under the Equal Protection Clause follows the same lines as an analysis under the First and Fourteenth Amendments." *De La Fuente v. Merrill*, 214 F. Supp. 3d 1241, 1259 (M.D. Ala. 2016).

SB 27 will infringe Plaintiffs' rights to the equal protection of the laws in two ways. First, voters who support party candidates who will not release their tax returns and are subsequently kept off the ballot in the primaries are at an enormous disadvantage compared to voters who support candidates who release their tax returns and appear on the ballot. The ability of voters whose candidates are kept off the primary ballot to cast an effective primary vote is substantially diminished.

Second, because SB 27 only applies to party-affiliated candidates, voters who vote in party primaries are at a disadvantage compared to voters who support independent candidates. Party-affiliated candidates must face the difficult choice of waiving their privacy rights or suffering an enormous electoral disadvantage. This "may very well deter candidates from running." *Schaefer*, 215 F.3d at 1037. As a result, voters who vote in party primaries may face a field of candidates that was artificially limited by the operation of SB 27.

Where ballot access restrictions limit the right to vote in violation of the Equal Protection Clause, those restrictions are subject to strict scrutiny. *See Lubin*, 415 U.S. at 719 (under the Equal Protection Clause, "the State's inability to show a compelling interest" in a statute "conditioning the right to run for office on payment of fees cannot stand") (Douglas, J., concurring) (citation omitted); *Ill. State Bd. of El.*, 440 U.S. at 183-84 (applying strict scrutiny to an onerous signature requirement and finding an equal protection violation).

For the reason set forth in the previous section, Defendant cannot show that SB 27 is narrowly tailored to further a compelling state interest. SB 27 threatens to violate Plaintiffs' rights under the Equal protection Clause without adequate legal justification.

II. The Remaining Preliminary Injunction Factors Favor the Plaintiffs.

"It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) (citations and quotations omitted). "The loss of First Amendment freedoms, for even minimal periods of time . . . constitutes irreparable injury." *Elrod v. Burns,* 427 U.S. 347, 373-74 (1976), citing *New York Times Co. v. United States*, 403 U.S. 713 (1971); *see also Klein v. City of San Clemente*, 584 F.3d 1196, 1207-08 (9th Cir. 2009). Where, as here, voters' First Amendment right to associate have been violated, the irreparable harm requirement for the issuance of a preliminary injunction has been satisfied. *Green Party v. N.Y. State Bd. of Elections*, 389 F.3d 411, 418 (2d Cir. 2004), citing *Elrod*, 427 U.S. at 373. Plaintiffs have, therefore, made that showing.

The Ninth Circuit has made it "clear that it would not be equitable or in the public's interest to allow the state . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del Sol, Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (citations omitted). Accordingly, the equities and the public interest support the issuance of an injunction.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for preliminary relief enjoining the enforcement of SB 27 during the pendency of this action.

Dated: August 20, 2019

Respectfully submitted,

JUDICIAL WATCH, INC.

By: /s/ Robert Patrick Sticht.

ROBERT PATRICK STICHT (SBN 138586)
ROBERT D. POPPER (*Pro Hac Vice*)
T. RUSSELL NOBILE*
JUDICIAL WATCH, INC.
425 Third Street SW, Suite 800
Washington, D.C. 20024
Telephone: (202) 646-5172
Facsimile: (202) 646-5199
Email: rsticht@judicialwatch.org
Email: rnobile@judicialwathc.org
Email: rpopper@judicialwatch.org

H. CHRISTOPHER COATES*
Law Office of H. Christopher Coates
934 Compass Point
Charleston, South Carolina 29412
Telephone: (843) 609-7080
Email: curriecoates@gmail.com

**Application for admission pro hac vice pending/forthcoming*

Attorneys for Plaintiffs